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Paper No. 27

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**OFFICE OF PETITIONS**

In re Application of  
David Andrew D'Zmura  
Application No. 09/849,582  
Filed: May 5, 2001  
Attorney Docket No.: None  
Title: METHOD OF DETERMINING  
ZODIAC SIGNS

: DECISION ON RENEWED PETITION  
: UNDER 37 C.F.R. §1.137(b)  
: VACATING PORTION OF  
: PREVIOUS DECISION

A petition under 37 CFR §1.137(a)<sup>1</sup> was filed on October 10, 2003<sup>2</sup>, and a petition under 37 C.F.R. §1.137(b) was filed on September 8, 2003<sup>3</sup>, to revive the above-identified application.

On November 10, 2003, a decision was mailed which dismissed the renewed petition under 37 CFR §1.137(a) and granted the petition under 37 C.F.R. §1.137(b).

Regarding the payment of the fee associated with the filing of a petition under 37 C.F.R. §1.137(b), petitioner submitted an authorization to charge his credit card.

Subsequent to the mailing of the decision on November 10, 2003, the amount of \$650.00 was charged to petitioner's credit card, as instructed. Unfortunately, the credit card number was declined.

As such, the portion of the decision mailed on November 10, 2003 which granted the petition under 37 C.F.R. §1.137(b) is hereby **VACATED**.

1 A grantable petition pursuant to 37 CFR 1.137(a) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(l);
- (3) A showing to the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

2 A supplement to this petition was submitted on October 23, 2003.

3 Petitioner filed the petition under 37 C.F.R. §1.137(b) with the original petition. It was not worked on so as to afford the applicant another opportunity to submit a renewed petition under the unavoidable standard.

**Petition fee requirement**

The fee for filing a petition to revive an unintentionally abandoned application under 37 C.F.R. § 1.137(b) is set forth in 37 C.F.R. § 1.17(m) as being one thousand and three-hundred dollars (\$1,300.00) for a large entity and six hundred and fifty dollars (\$650.00) for a small entity. Although Petitioner indicated that this fee (\$650.00) was to be charged to his credit card, this credit card number has been declined. Therefore, requirement number (2) above has not been met.

The payment of the required petition fee is a prerequisite to the filing of a petition to revive under 37 C.F.R. § 1.137. Therefore, consideration of the merits of the petition before receipt of the filing fee would be premature. See M.P.E.P. 711.03(c)(III)(B)<sup>4</sup>

In view of the foregoing, this petition is **DISMISSED**.

The reply to this letter may be submitted by mail<sup>5</sup>, hand-delivery<sup>6</sup>, or facsimile<sup>7</sup>. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Second Renewed Petition Under 37 CFR § 1.137(b)". This is not a final agency action within the meaning of 5 U.S.C 704.

**The application file will be retained in the Office of Petitions for two (2) months.**

Telephone inquiries regarding *this decision* should be directed to the undersigned at (703) 305-0011.



Paul Shanoski  
Attorney  
Office of Petitions  
United States Patent and Trademark Office

<sup>4</sup> "...[T]he payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application and cannot be waived. In addition, the phrase '[o]n filing' in 35 U.S.C. §41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 C.F.R. § 1.137. See H.R. Rep. No. 542, 97th Cong., 2nd Sess. 6 (1082), *reprinted in* 1982 U.S.C.C.A.N. 770 ('[t]he fees set forth in this section are due on filing the petition'). Therefore, the Office...will not reach the merits of any petition under 37 C.F.R. § 1.137 lacking the requisite petition fee."

<sup>5</sup> Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

<sup>6</sup> Office of Petitions, 2201 South Clark Place, Crystal Plaza 4, Suite 3C23, Arlington, VA 22202.

<sup>7</sup> (703) 308-6916 or (703) 305-4257, Attn: Office of Petitions.